TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 143.

JULIAN E. WOODWELL, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 18, 1907.

(20,808.)

(20,808.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 405.

JULIAN E. WOODWELL, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 25, 1907.

1 In the Court of Claims of the United States.

No. 25635, General Jurisdiction.

JULIAN E. WOODWELL
v.
THE UNITED STATES.

I.—*Petition. Filed July* 6, 1904.

To the Honorable the Chief Justice and the Associate Justices of the Court of Claims:

Your petitioner, Julian E. Woodwell, a resident of Washington, D. C., respectfully represents and shows unto your Honors:

1. That he is a citizen of the United States, of lawful age, and was such at all times hereinafter mentioned.

2. That in an act of Congress entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June Thirtieth, Nineteen Hundred and Two, and for other purposes," approved March 3, 1901, there is provided—

For the establishment of an electric-lighting plant for the buildings occupied by the offices of the Department of the Interior, the Patent Office building, the old Postoffice building, now occupied by the General Land and Indian Bureaus, and the Pension Office building, and for improvements in the heating of the Patent Office building, including necessary conduits, the laying and construction of which are hereby authorized, Seventy-four Thousand Dollars.

3. That under the authority of the said provision the Secretary of the Interior requested the Secretary of the Treasury to permit some competent officer of the Treasury Department to take
2 charge of the work authorized and appropriated for by said act.

That pursuant to this request of the Secretary of the Interior, the Secretary of the Treasury did grant permission to your petitioner, who was, and is now, the Inspector of electric-lighting plants in the Treasury Department, to assume charge of said work.

4. That your petitioner, after a conference with the Chief Clerk of the Interior Department, assumed entire control of the work to be performed in accordance with the said act; and that he entered upon the work on May 15, 1901, and was so engaged in the said work until February 15, 1902.

That the services rendered by your petitioner in connection with said work consisted in making complete drawings and specifications covering the whole mechanical plant, including the necessary boilers, engines, dynamos, conduits, wires, pipes, etc.; and that your petitioner had sole charge of the construction and installation of the entire plant, which was completed under his sole direction in accordance with the provisions of the said act of Congress, and

was finally inspected and approved by your petitioner when completed, and upon his recommendation was accepted as satisfactory by the Interior Department.

5. That your petitioner performed all his services in this connection outside the hours of his employment as an official of the Treasury Department; and that during all the period in which your petitioner was engaged in the performance of this work, he constantly performed the regular duties and routine work of his office to the satisfaction of the Chief Clerk of the Treasury Department.

3 6. That your petitioner had frequent conferences with the Chief Clerk of the Interior Department; and while no contract was entered into for a definite compensation to your petitioner, it was the understanding that he was to be compensated for his services in this particular; and the said services were wholly outside the ordinary duties of petitioner's official position as Inspector of electric-lighting plants in the Treasury Department and were rendered at the request of the Secretary of the Interior, and in the expectation and belief of receiving a reasonable compensation therefor.

7. That the services rendered by your petitioner reasonably and fairly entitled him to a compensation equal to three per centum of the sum expended, said compensation of three per centum being the minimum fee for work of such character.

8. That your petitioner presented to the Secretary of the Interior a claim for One Thousand Dollars for the services so rendered. This sum of One Thousand Dollars was claimed because that amount remained unexpended out of the appropriations for the establishment of the said electric-lighting plant and for the improvements in heating, and because your petitioner believed the Secretary of the Interior would have the authority to allow that sum out of the balance remaining from the appropriations. But said sum does not represent the fair and true value of the services rendered by your petitioner.

The said claim was disallowed by the Comptroller of the Treasury, in an opinion of June 21, 1904.

9. That out of said appropriation of $74,000 there was
4 expended, under your petitioner's direction, $73,500:

That three per centum thereof represents the actual value of an engineer's services; therefore, that the United States is indebted to your petitioner in the sum of $2,200, being three per centum of said amount so expended.

Wherefore, your petitioner prays the judgment of this Honorable Court and that he may have judgment in the said sum of $2,200, with interest from February 15, 1902, when the said sum became due to him.

JULIAN E. WOODWELL.

WM. H. ROBESON, *Attorney.*

DISTRICT OF COLUMBIA, *ss:*

This day personally appeared before me Julian E. Woodwell, who, having been first duly sworn, deposes and says:

I am the claimant in the foregoing petition. I have read the petition and understand its contents. The statements therein made of my own knowledge are true; those made upon information and belief, I believe to be true.

JULIAN E. WOODWELL.

Subscribed and sworn to before me this the 2d day of July, 1904.

[SEAL.] MARTHA M. BECK,
Notary Public.

5 II.—*Amended Petition. Filed February* 14, 1906.

To the Honorable the Chief Justice and the Associate Justices of the Court of Claims:

Your petitioner, Julian E. Woodwell, comes now by leave of the Court first had and obtained, and files this his amended petition, and reaffirming the allegations of his original petition as if the same were in substance and in form here repeated, except paragraph 7 thereof, respectfully represents and shows—

That the services rendered by your petitioner as set out in the said original petition reasonably and fairly entitled him to a compensation equal to five per centum of the sum expended, to wit, five per cent. of $73,500, being $3,675.

Wherefore your petitioner prays the judgment of this Honorable Court, and that he may have judgment in the said sum of $3,675.

JULIAN E. WOODWELL.

WM. H. ROBESON, *Att'y.*

DISTRICT OF COLUMBIA, *ss:*

This day personally appeared before me Julian E. Woodwell, who having been first duly sworn, deposes and says:

6 I am the claimant in the original and in this amended petition. I have read the amended petition and understand its contents. The statements therein made are true according to the best of my knowledge, information and belief.

JULIAN E. WOODWELL.

Subscribed and sworn to before me this 14th day of February, 1906.

[SEAL.] JAS. N. FITZPATRICK,
Notary Public in and for the District of Columbia.

My commission expires, Feb'y 9, 1907.

7 III.—*Traverse. Filed April* 12, 1906.

In the Court of Claims of the United States, December Term, A. D. 1906-'7.

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney General.

8 IV.—*Argument and Submission of Case.*

On the 12th day of April, 1906, this case was argued by Mr. William H. Woodwell, on behalf of the claimant, and by Mr. Felix Brannigan, for the defendants, and submitted.

9 V.—*Findings of Fact and Conclusion of Law and Opinion of the Court. Filed May* 7, 1906.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant is a citizen of the United States and the inspector of electric light plants under the jurisdiction of the Treasury Department, and was such inspector and employee in the Treasury Department at all of the times hereinafter mentioned, receiving a salary of $2,000 per annum, and during which time the services hereinafter mentioned were rendered the claimant was a mechanical and electrical engineer.

II.

The sundry civil appropriation act for the fiscal year ending June 30, 1902, provided for the installation of an electric light plant for the Department of the Interior buildings and for improvement in the heating of the Patent Office buildings.

III.

The following correspondence took place between the office of the Secretary of the Interior and the office of the Secretary of the Treasury relative to the employment of the claimant in and about the installation of said electric lighting plant and the improvement of said heating of the Patent Office building.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 11, 1901.

The Honorable the Secretary of the Treasury.

SIR: In the sundry civil act, approved March 3, 1901, appropriation is made

"For the establishment of an electric lighting plant for building occupied by offices of the Department of the Interior, the Patent Office building, the old Post-Office building, now occupied by the General Land and Indian Bureaus, and the Pension Office building, and for improvement in the heating of the Patent Office building, including the necessary conduits."

When this item was under consideration, the Committee on Appropriations of the House of Representatives secured, through the Assistant Superintendent of the Treasury, the itemized estimate of cost of the proposed work upon which the amount of appropriation is based, and, at the hearing before the committee, it was also indicated by members thereof that it would be expected that the projected work should conform to the estimate and the general plan outlined therein.

I have, therefore, to request that, if practicable, some competent person connected with the Treasury Department, expert in such matters, may be authorized to prepare detailed plans and specifications, upon which proposals for the work contemplated in the appropriation may be called for at an early date.

Very respectfully,

(Signed) E. A. HITCHCOCK, *Secretary.*

TREASURY DEPARTMENT,
WASHINGTON, *March* 14, 1901.

The Honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of your letter, dated March 11, 1901, requesting that a competent person, now employed by this Department, be authorized to prepare the necessary plans and specifications covering the installation of a plant for the lighting of the old Post-Office Department building, Patent Office building, and Pension Office building, and the improvement in the heating of the Patent Office building, including conduits.

In reply you are informed that the work incident to the preparation of the plans and specifications can be performed under the supervision of a qualified employee of this office, who is familiar with the requirements, but as the work will involve the employment of draftsmen and other persons who can not be supplied from the regular force of this Department without detriment to its business

it is assumed that such service can be paid for from the appropriation provided for the installation of the plant. Such expense will not exceed $500, including the expense incident to a general inspection of the work during the period of the installation.

It is the judgment of this Department that the installation can be completed in all its details in the most satisfactory manner without exceeding the limits of the appropriation provided therefor—namely, $74,000.

Respectfully,
(Signed) O. L. SPAULDING,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 8, 1901.

The Honorable the Secretary of the Treasury.

SIR: Referring to your letter of March 14, 1901, in which you state that in compliance with the request of this Department
11 a competent person connected with the Treasury Department will be authorized to prepare necessary plans and specifications covering the installation of the electric-lighting plant for the buildings of this Department, and to your suggestion that the work will involve the employment of draftsmen and other persons who can not be supplied from the regular force of the Treasury Department, and which would involve an expense not to exceed $500, which would include the expense incident to the general inspection of the work during the period of installation, I have the honor to inclose herewith a copy of the decision of the Comptroller of the Treasury, to whom the matter was submitted by this Department, in which the conclusion is reached that prior to July 1, 1901, the preliminary expenses necessary to carry into effect the appropriation for the electric-lighting plant may be incurred, although payment therefor can not be made previous to that date.

The Department would be glad to have the preliminary work commenced at the earliest practicable date, and would be pleased to consider any recommendation as to the employment of the services of draftsmen, etc., referred to in your letter. If such services can not be procured upon the terms named by the Comptroller, it is believed that it can, in the meantime, be furnished by detail from some branch of this Department.

Very respectfully, THOS. RYAN,
Acting Secretary.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *May* 10, 1901.

The Honorable the Secretary of the Interior.

SIR: Referring to your letter of May 8, 1901, you are informed that Mr. J. E. Woodwell, inspector of electric light plants, has been directed to confer with E. M. Dawson, chief clerk, Department of

the Interior, relative to the installation of an electric light, heat, and power plant, in the old Post-Office Department building in this city.

Respectfully,

(Signed) L. J. GAGE, *Secretary.*

Order.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June* 21, 1901.

A board to consist of Mr. Edward M. Dawson, chief clerk of the Department; Mr. J. E. Woodwell, inspector of electric light plants, Treasury Department, and Mr. Joseph S. Hill, engineer, etc., "General Post-Office" is hereby constituted to, from time to time, open bids and recommend awards of contracts for the work embraced in the installation of the electric lighting plant for the buildings of the Interior Department, and in the improvement of the heating of the Patent Office building.

The board will meet at the office of the chief clerk of the
12 Department at such times as may be designated by advertisement for opening proposals for the work.

E. A. HITCHCOCK, *Secretary.*

Official copy for Mr. J. E. Woodwell.

(Signed) EDWARD M. DAWSON,
Chief Clerk.

(Through the Honorable the Secretary of the Treasury.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *November* 23, 1901.

The Honorable the Secretary of the Interior.

SIR: Referring to your letter of November 21, 1901, requesting that Mr. J. E. Woodwell, inspector of electric-light plants, Treasury Department, be instructed to conduct a test of the engines and dynamos being manufactured by the Ridgway Dynamo and Engine Company, Ridgway, Pa., for the Interior Department, I have the honor to state that owing to prior and important instructions it will be impracticable for Mr. Woodwell to make the test the 25th instant, as desired by you.

You are advised, however, that, if the matter can be held in abeyance until December 2, 1901, Mr. Woodwell will be instructed to make the test.

Respectfully,

(Signed) H. A. TAYLOR,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January* 2, 1902.

Mr. J. E. Woodwell, Inspector of Electric Lighting, Treasury Department.

SIR: Permission having been obtained from the Secretary of the Treasury for you to perform such service, you are hereby authorized and directed to proceed to Ridgway, Pa., as the representative of this Department at shop tests to be made, commencing on Monday next, the 6th instant, of the engines and dynamos to be furnished by the Ridgway Dynamo and Engine Company, under contract with this Department.

There is herewith inclosed, for your information and guidance, a copy of the specifications of the contract wherein it is provided that, "The regulation, guaranteed efficiency, heating effect, and insulation resistance shall be determined by actual test in the presence of the Department's authorized inspector, who shall determine test conditions. The tests to be made at the shops where the dynamos are constructed, upon due notification by contractors of their readiness to commence said test, and at the expense of the contractor, except traveling and other necessary expenses of Department's agent. Should the test be delayed or require repetition for any reason for
which the contractor is justly responsible, the cost of the
13 delayed or any subsequent test, including the traveling and
other necessary expenses of the Department's agent, shall be at the expense of the contractor."

Mr. L. K. Sager, of this Department (Patent Office), will be detailed to accompany you and assist in making the tests.

Your actual expenses while engaged upon this service will be paid by this Department upon presentation of proper accounts and vouchers from funds available.

Very respectfully,
(Signed) THOS. RYAN,
Acting Secretary.

IV.

Thereafter, and as a result of said correspondence, the claimant, as such mechanical and electrical engineer, performed certain services in and about the installation of said electric lighting plant and heating plant, between the 10th day of May, 1901, and the 1st day of February, 1902, and devoted 897 hours to said service, and also necessarily expended $110 in connection therewith.

V.

Such services rendered by the claimant were performed outside of his regular office hours as such employee in the Treasury Department, and during the time of the rendition thereof he also fully discharged his duties as such employee in the Treasury Department.

Conclusion of Law.

Upon the foregoing findings of fact, the court decides, as a conclusion of law, that the petition be, and the same is hereby dismissed.

Opinion.

BARNEY, *J.*, delivered the opinion of the court:

It appears without contradiction in this case that the claimant was an inspector of electric light plants employed in the Treasury Department, receiving a salary of $2,000 per annum, and was such employee at the times hereinafter mentioned.

The sundry civil appropriation act for the fiscal year ending June 30, 1902, provided for the installation of an electric light plant for the Department of the Interior buildings, and for improvement in the heating of the Patent Office building, in the following language:

"For the establishment of an electric lighting plant for buildings occupied by offices of Department of the Interior, the Patent Office building, the old Post-Office building, now occupied by the General Land and Indian bureaus, and the Pension Office building, and for improvement in the heating of the Patent Office buildings, including necessary conduits, the laying and construction of which are hereby authorized, the sum of seventy-four thousand dollars." (31 Stat. L., 1156.)

There being no person then employed in the Interior Department competent for that purpose, certain correspondence took place
14 between the Secretary of the Interior and the Secretary of the Treasury as to the authorization of some person connected with the Treasury Department to prepare detailed plans and specifications for such lighting and heating plant, and for other services in connection with said work, all of which appears in the findings herein.

Thereupon the claimant was directed by the Secretary of the Treasury to render this required assistance; and although the language of these directions is somewhat indefinite as to just what he was required to do, it appears that he did the principal part of the work in preparing these plans and specifications, and also rendered valuable assistance thereafter in the supervision and inspection of said work.

It appears that he was thus employed about 897 hours, and that this work was all done outside of his regular office hours, and some of it during the time which he could have taken for his vacation; also that during all this time he attended regularly and acceptably to his duties as such official in the Treasury Department.

It must be admitted that these facts present a strong equitable case in favor of the claimant, and we should be in favor of making a reasonable allowance for him, were it not for the fact that in our opinion the law forbids us so to do. It might be well to say here that

in its general application we believe this law to be wise and beneficent.

The following provisions of the Revised Statutes prohibit additional and double compensation to Government employees:

"SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

"SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

"SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance or compensation.

These statutes, upon first inspection, would appear so plain in their provisions and in their application as hardly to admit of contention as to their proper construction. They have, however, been reviewed both by this court and the Supreme Court in several well-considered cases. For that reason it would hardly serve a useful purpose to review them in this case or to do little more than merely to refer to them. (Hoyt *v.* United States, 10 How., 109; Converse *v.* United States, 21 How., 463; Hall *v.* United States, 91 U. S., 559; United States *v.* Saunders, 120 U. S., 126; United States *v.* King, 147 U. S., 676.)

15 The rule governing these cases would appear to be but little more than a mere paraphrase of the statutes, but that is well done in the case of Hall *v.* United States (*supra*), and is as follows:

"Nor can any compensation for extra services be allowed * * * unless it appear that the head of the Department was authorized by an act of Congress to appoint an agent to perform the extra service; that the compensation to be paid for the service was *fixed by law;* that the service to be performed had respect to matters wholly outside of the duties appertaining to the office held by the agent, and that the money to pay for the extra services had been appropriated by Congress."

It has been held in several cases that these statutes are not applicable to those cases where two distinct offices, places, or employments, each of which has its own duties and its own compensation, are both held by one person at the same time. (United States *v.* Saunders, 120 U. S., 126, and cases cited.)

In the present case, conceding that the rendition of the services was authorized by law, certainly there was no "appropriation therefor explicitly stating that it was for such additional pay, extra allowance, or compensation." Nor is it shown that the claimant was di-

rected to perform these services outside of his regular office hours; on the contrary, it appears that each action was entirely voluntary on his part.

Neither can it be contended that the claimant held two distinct offices or places, each of which had its own duties and compensation. On the contrary, the services performed were merely incidental to a work appropriated for in general terms, and without making any explicit provision for their payment.

It is therefore orded that the petition be dismissed.

BY THE COURT.

16 VI.—*Final Judgment of the Court.*

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 7th day of May, A. D., 1906, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant, Julian E. Woodwell, be and the same is hereby dismissed.

BY THE COURT.

17 VII.—*Motion of Claimant for New Trial, Filed July 3, 1906, and Order of Court of April 22, 1907, Overruling Same.*

Claimant's Motion for a New Trial.

In this cause comes the claimant by attorney, and moves the court for a new trial thereof and for ground of said motion alleges:

I. That the court was in error in holding that the payment of the amount claimed for services rendered, as alleged in the petition, was additional or double compensation.

II. That the court was in error in holding that Sections 1863, 1764 and 1765 of the Revised Statutes, have application in any way to the claim preferred by the claimant in his petition.

III. That the court was in error in holding that the claim which is the subject of suit, is a claim for compensation for extra services.

IV. That the court was in error in holding that the services performed by the claimant as Inspector of Electric Light Plants in the Treasury Department, and those performed by him as a Mechanical and Electrical Engineer in the installment of the electric light plant for the Department of the Interior, were not two distinct offices or employments, for each of which the claimant was entitled to compensation.

V. That the court was in error in holding that because the performance of the claimant's services as such Mechanical and
18 Electrical Engineer, in the installment of the electric light plant for the Department of the Interior, outside of his regular office hours during which he was held to duty in the Treasury Department, was voluntary, he was not, therefore, entitled to recover for such services performed outside of his regular office hours.

VI. The court was in error in not holding that whether the performance of said services outside the claimant's regular office hours as an employee of the Treasury Department, was voluntary or not, the government, having requested the performance of such services and having accepted the benefit thereof, with full knowledge, is liable to compensate the claimant for such services.

VII. The court was in error in holding (if it so meant to hold) that an explicit provision for payment for such services in the appropriation bill was necessary to create liability on the part of the United States.

VIII. The court was in error in its finding that the claimant was directed by the Secretary of the Treasury to render the services performed by him in the installation of the electric lighting plant in the Interior Department.

IX. The court was in error in holding that the performance of the work averred in the petition, as a Mechanical and Electrical Engineer, in the installation of the electric lighting plant in the Department of the Interior, had any connection whatever with, or was in any wise embraced in, or was any part of the duties or obli-
19 gations of the claimant, under his employment by the Treasury Department.

X. The Court was in error in dismissing the petition.

WM. H. ROBESON,
Attorney for Claimant.

Order.

It is ordered that the claimant's motion filed July 3, 1906, for a new trial in the above-entitled cause be overruled. Filed April 22, 1907.

BY THE COURT.

20 VIII.—*Claimant's Application for, and Allowance of, Appeal to the Supreme Court of the United States.*

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

Motion for Appeal to the Supreme Court.

In this cause comes the claimant by attorney and prays the court for the allowance of an appeal to the Supreme Court of the United States from its judgment of April 22, 1907.

WILLIAM H. ROBESON,
Attorney for Claimant.

July 12, 1907.

Ordered that the above application for appeal by allowed as prayed for.

STANTON J. PEELLE,
Chief Justice.

July 16, 1907.

21 Court of Claims.

No. 25635.

JULIAN E. WOODWELL
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law filed by the Court; of the judgment of the Court; of the motion of claimant for a new trial and order of Court overruling same; of the application of claimant for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 17th day of July A. D., 1907.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 20,808. Court of Claims. Term No. 405. Julian E. Woodwell, appellant, *vs.* The United States. Filed July 18th, 1907. File No. 20,808.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907

JULIEN E. WOODWELL, Appellant
vs.
THE UNITED STATES
No. 143

BRIEF FOR APPELLANT

I

Statement of the Case

This cause is pending in this Honorable Court on appeal from the judgment of the Court of Claims dismissing the petition.

From a date prior to March 3, 1901, up to the time of the bringing of this suit, the appellant was inspector of electric light plants under the jurisdiction of the Treasury Department, receiving a salary of $2,000 per annum. (Rec., 4.)

The Sundry Civil Appropriation Act for the fiscal year ending June 30, 1902, contained this provision:

> For the establishment of electric lighting plants for the buildings occupied by the offices of the Department of the Interior, the Patent Office Building, the Old

Post Office Building, now occupied by the General Land and Indian Bureaus, and the Pension Office Building, and for improvements in the heating of the Patent Office Building, including necessary conduits, the laying and construction of which is hereby authorized, $74,000. (31 Stat. L., p. 1156.)

On March 11, 1901, the Secretary of the Interior addressed the Secretary of the Treasury, requesting that some competent person connected with the Treasury Department, expert in such matters, be authorized to prepare plans and specifications upon which proposals for the work contemplated in the said appropriation act might be called for. (Rec., p. 5.)

On March 14, 1901, the Secretary of the Treasury replied to this communication, informing the Secretary of the Interior that the work referred to could be performed under the supervision of a qualified employee of the Treasury Department, who was familiar with the requirements. (Rec., pp. 5, 6.)

On May 8, 1901, the Secretary of the Interior replied, asking the recommendation of the Secretary of the Treasury as to the employment of the services of draughtsmen, &c. (Rec., p. 6.) To this the Secretary of the Treasury replied on May 10, 1901, stating that J. E. Woodwell, appellant, had been directed to confer with the Chief Clerk of the Department of the Interior relative to the installation of the lighting, heating and power plant contemplated by the act in question. (Rec., pp. 6, 7.)

On June 21, 1901, the Secretary of the Interior appointed the chief clerk of his department and the appellant, and another, a board which should, from time to time, open bids and recommend awards of contracts for the work embraced in the installation of the plant. (Rec., p. 7.)

On November 23, 1901, the Secretary of the Treasury, replying to a letter from the Secretary of the Interior which

does not appear in the record, stated that, with reference to the letter of the Secretary of the Interior requesting that appellant be instructed to conduct a test of the engines and dynamos being manufactured by the company to whom the contract had been awarded, it would be impracticable for Mr. Woodwell to make the test at the time named, but that he could make it later. (Rec., p. 7.)

On January 2, 1902, the Secretary of the Interior addressed the appellant as follows:

> "Permission having been obtained from the Secretary of the Treasury for you to perform such service, you are hereby authorized and directed to proceed to Ridgeway, Pennsylvania, as the representative of this Department at shop tests to be made, commencing on Monday next, the 6th instant, of the engines and dynamos to be furnished by the Ridgeway Dynamo and Engine Company, under contract with this Department."

The letter added that appellant's expenses while engaged in such services would be paid by the Department. (Rec., p. 8.)

As the result of said correspondence the appellant performed certain services in and about the installation of the plant, between May 10, 1901, and February 1, 1902, devoting 897 hours to the service, and expending necessarily $110 in connection therewith (Rec., p. 8, Finding IV).

These services rendered by the claimant were performed outside of his regular office hours as such employee, and during all this period he fully discharged his duties as an employee of the Treasury Department (Rec., p. 8).

The original petition sought to recover three per cent. of the amount expended, $2,200, but the amended petition averred that a reasonable and fair compensation was five per cent. of the sum expended in the construction of the

plant, being $3,675, and judgment was asked in that sum (Rec., p. 3).

The petition was dismissed on May 7, 1906 (Rec., p. 11); a motion for new trial was filed July 3, 1906, was overruled April 22, 1907, and this appeal allowed July 16, 1907 (Rec., p. 13).

Specification of Errors

The Court of Claims was in error—

1. In holding that because the claimant was an employee of the Government he could not recover the value of services performed for the Government entirely distinct from, and independent of, those required of him by virtue of his office.

2. In holding this to be a claim for additional or extra compensation, and that it is subject to the provisions of Sections 1763, 1764 and 1765 of the Revised Statutes.

3. In holding that the claimant did not hold two distinct offices or places, each of which had its own duties and compensation.

4. In holding that an explicit provision for payment for such services in the appropriation bill was necessary to create liability for claimant's services on the part of the United States.

5. In not awarding a judgment in appellant's favor for $3,675.

Argument

The first error assigned is the holding by the court below that one in the employ of the Government cannot recover for services rendered the Government in an entirely distinct and separate employment. The court did not use that exact language; but we shall submit that to be the necessary result of its action and opinion in this case. Appellant was employed in the Treasury Department, being Inspector of Electric Light Plants in those buildings under its jurisdic-

tion. He was an officer of the Treasury Department, subject only to the orders of his superiors in that Department, and obligated to perform only the duties of the position he held there. If, after his office hours, the Postmaster-General had employed him to devise a better plan for the distribution of mails in the city of Washington, or if the Department of Justice had sought his aid at a time when he was not held to the performance of duties to the Treasury Department, or if he had been called upon to act as a private secretary at the White House during the period of his vacation—for none of these services could he have recovered if this decision is correct.

Under this decision a night watchman in the Treasury Department, whom the Secretary of War might employ to plant flowers in the public parks in the afternoons, could not recover for the latter services; which is to say, in short, that one in the Government employ on a salary, cannot contract for the performance of entirely distinct duties and receive remuneration therefor.

As claimant was subject to the direction and control of the Secretary of the Treasury, the Secretary of the Interior had no jurisdiction of him and no right to command his time or service except upon the making of a suitable remuneration therefor.

The Secretary of the Treasury could not have required him to perform any service to the Interior Department, because he was the inspector of electric lights, charged with the duty of such inspection in those buildings which were under the control of the Treasury Department.

If, therefore, the Secretary of the Treasury could not have required him to perform duties under the direction of the Secretary of the Interior, and if the Secretary of the Interior had no jurisdiction over him, he was clearly not compellable to perform the service of installing an electric light and heating plant in the Interior Department.

It happened that he was an expert, such as the Secretary of the Interior desired and was compelled to have, in order

to provide the installation of this plant for the Interior Department.

The Secretary of the Interior wisely sought the aid of some person possessing such skill and knowledge, and found such a person in the claimant.

If the Secretary of the Interior had not secured the services of the appellant he would have had to secure the services of some other person, either already in the Government service, or out of it, and to pay for such services, but he chose the claimant.

Therefore, as we have said, to hold that this claimant cannot recover the reasonable value of his services is to give as the reason therefor that he was already in the Government employ. As we shall presently show, this holding is directly to reverse at least two decisions of the Court of Claims itself, and to be unmindful of several decisions of this Honorable Court.

II

The second error assigned is that the court held this to be a claim for additional or extra compensation and subject to the provisions of Sections 1763, 1764, 1765 of the Revised Statutes.

What we have already said demonstrates that this is not a claim for additional or extra compensation. These services were performed, as the court finds, outside of appellant's regular office hours, during a period in which he also fully discharged his duties as an employee of the Treasury Department (Rec., p. 8). "Additional compensation" means, necessarily, an increased compensation for the performance of the same service to which the employee was held and for which he was otherwise compensated. It is manifest that to pay the appellant for services performed by him, which he was under no obligation to perform, would not be compensation additional to that he received for per-

forming the duties of his office. That it would not be "double compensation" is very evident, for the same reason.

Section 1763 of the Revised Statutes is in these words:

> "No person who holds an office, the salary or annual compensation attached to which amounts to the sum of $2,500, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law."

The clear meaning of this statute is that no person shall be compensated with the salaries of two positions which are incompatible, if, *in the same time*, the person performs the duties of two offices. That is far from meaning that a man who is a salaried officer of the Government cannot contract to perform out of his own time, other services to the Government and receive compensation therefor. If the appellant had performed these services during the time he was held to service under his permanent office in the Treasury Department, and was receiving the salary attached to his permanent office, then he might be within the principle of this statute. But the Court of Claims construed this statute to be one which excludes a man *whose salary was less than $2,500* (Rec. p. 4), from receiving pay for the performance of any other work, as, for instance, during his vacation, or out of office hours, or during a period when his permanent salary is discontinued. It is impossible that the statute has any application to such conditions.

Section 1764 is in these words:

> "No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law."

This statute names two conditions under which compensation is prohibited:

First, where the duties discharged belonged to any other officer or clerk in the same or any other department. Manifestly, this is not a suit for compensation "by reason of the discharge of duties which belonged to any other officer or clerk in the same or any other Department."

The services rendered by the appellant were rendered in the performance of a special undertaking. There was no one available in the Department of the Interior fitted to prepare these plans or specifications or to supervise the construction of the plant. The Secretary of the Interior was acquainted with the fact that work of a similar character was being performed throughout the country upon the public buildings under the control of the Treasury Department, and, therefore, sought from the Treasury Department a competent person to undertake this work.

The second class of cases in which compensation is expressly prohibited are those for "any extra services whatever, which any (the) officer or clerk may be required to perform, unless authorized by law." Appellant's work did not constitute "extra services," and as it was a distinct service, totally apart from that to which he was held by virtue of his office, he could not have been required to perform it.

Section 1765 of the statutes is as follows:

> "No officer in any branch of the public service, or any other person whose salary, pay or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service, or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

This is a prohibition against *additional or extra* compensation. Appellant's claim, as we have shown, is not one for additional compensation, nor for extra pay. It is a simple claim for the value of independent and separate service rendered during time to which the Government had no claim, and which was the claimant's own.

In its opinion, the court, referring to these statutes, notes the fact that they have been several times construed by the Supreme Court. It is remarkable that the cases cited on page 10 are unqualifiedly in support of the position of the claimant.

Let us take the case of Saunders (120 U. S., 126, 129), where the court, construing these three statutes, says:

> "We are of the opinion that, taking these sections all together the purpose of this legislation was to prevent a person holding an office or appointment, for which the law provides a definite compensation by way of a salary, or otherwise, which is intended to cover all services which, as such officer, he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services *which may be required of him* either by act of Congress or *by order of the head of his Department*, or in any other mode, added to or connected with the regular duties of the place which he holds * * *"

Note that the application is, in this opinion, made to a case of payment to one for services *which may be required of him*, and which he is directed to perform by act of Congress or by the order of the head of the department of which he is an employee.

The opinion continues—

> "but that they have no application to the case of two distinct offices, or places or employments, each of which has its own duties and its own compensation, which offices may be held by one person at the same

> time. In the latter case he is, in the eye of the law, two officers, or holds two places or appointments, the functions of which are separate and distinct, and, according to all decisions, he is, in such case, entitled to recover two compensations."

Could a clearer case for the application of this decision be presented than this one? Is it possible to find a case regarding which it may be more aptly said that these statutes have no application because two distinct employments were being filled, each of which had its own duties and its own compensation, and both of which might be held by one person at the same time?

Let us examine the other cases cited in the opinion. In the King case (147 U. S., 676) compensation was denied to the clerk of the circuit court for services as jury commissioner, but on the ground distinctly stated in the opinion, that the services as jury commissioner were "incidental and germane to his regular duties as clerk."

> "The law does not forbid compensation for extra services which have no affinity or connection with the duties of the office he holds." (21 Howard, p. 469.)

None of these opinions of the Supreme Court are considered *in extenso* in the opinion of the court below; but the court cites from the opinion in the case of Hall (91 U. S., 559) a statement which we respectfully submit has no application to the circumstances of this case. The language cited is:

> "Nor can any compensation for extra services be allowed * * * unless it appear that the head of a Department was authorized by an act of Congress to employ an agent to perform the extra service, etc." (Rec., p. 10.)

And in this statement of that opinion is shown the error of the court below in that it has considered this claim as

being one for extra services. It is not one for extra services. It is a claim for compensation for distinct services "having no affinity or connection with the duties of the office" held by appellant.

III

It is declared in the last paragraph of the opinion of the Court of Claims (Rec., p. 11) that it cannot be contended "that the claimant held two distinct offices or places, each of which had its own duties and compensation."

It is, perhaps, inaccurate to say that the claimant held two offices. He held one "office," that of Inspector of Electric Lighting Plants in the Treasury Department. He had one separate employment—that of installing an electric lighting and heating plant in the buildings of the Department of the Interior. One of these, his office, had a distinct compensation. In his employment by the Interior Department he was a hired man. It is impossible for counsel to conceive that the duties of the officer and the duties of the hired man, were not entirely distinct; and that, as an officer, the claimant was not entitled to his salary, and as a hired man, to his fair wages.

IV

The court, in the very last sentence of its opinion (Rec., p. 11) says that the services performed (as a hired man)

> "were merely incidental to the work provided for in general terms, and without making any explicit provision for their payment."

This statement of the opinion would be without pertinency if the court had not considered in connection with it, the language of the opinion in the Hall case (*supra*) that compensation for *extra services* should not be allowed "unless it appear that the head of the Department was authorized by an act of Congress to employ an agent to perform the *extra services;* that the compensation to be paid for the service was *fixed by law.* * * * "

This court will observe that the appropriation act authorized the expenditure of $74,000 "for the establishment of an electric lighting plant for the buildings occupied by the offices of the Department of the Interior * * * and for improvements in the heating of the Patent Office Building, including necessary conduits, the laying and construction of which are hereby authorized. * * * " (Rec., p. 1.)

Is it possible that under this appropriation the Secretary of the Interior could not have employed an engineer outside the Government service, or within it, because Congress did not, in the act, say how much the Secretary of the Interior could pay an engineer for doing that work? An engineer was as truly a necessary adjunct to the work as the men who fitted the pipes and dug the conduits. The error of the court, of course, was in holding that this work constituted "extra service," because performed by one who was in the employ of the Government.

Contrary Opinins of the Court of Claims

It seems to counsel remarkable that the court below did not, in its opinion, consider two of its own recent decisions, which, we respectfully submit, are directly opposed to the decision in this case.

In the case of Crosthwaite (31 Ct. Clms., 300) the Court of Claims declared:

> "The Attorney General cannot commission an Examiner in his Department as Special Assistant Attorney, and assign him to criminal business, and send him into the grand jury room to examine witnesses, then deny that he was acting as District Attorney. It is settled that a person may hold two offices and receive the salaries of both, each having it own duties and compensation, and they not being incompatible."

The case of Peter Collier (22 Ct. Clms., 125), is absolutely on all fours with this one. In that case the court said:

> "The court is of the opinion that the service which the claimant rendered, *having been one which could not have been legally required of him either by the Secretary of the Treasury, or Commissioner of Agriculture, and having been rendered with the knowledge and consent of his superior officer, and for a Department having no official control of him, and to which he owed no service whatever,* and the employment, moreover, *being within the legal discretion of the Secretary of the Treasury, and for the benefit of the Government,* the case is naturally ruled by the decisions of the Supreme Court in the cases of (Converse *vs.* U. S., 21 How., 463), (U. S. *vs.* Brindle, 110 U. S., 688) and (U. S. *vs.* Saunders, 120 U. S., 126)."

Now, taking this opinion phrase for phrase, we say that the service rendered by this appellant was "one which could not have been legally required of him either by the Secretary of the Treasury" or the Secretary of the Interior; that it was rendered with the knowledge and consent of appellant's superior officer; that it was rendered "for a Department having no official control" of appellant, and for a Department "to which he owed no service whatever;" and that the employment was "within the legal discretion of the Secretary of the Interior" and "for the benefit of the Government;" and, therefore, that it is "naturally ruled" by the decisions of this honorable court cited in the opinion above given; for, all these things being so, where is there a difference between the case of Peter Collier who recovered a judgment, and this case of appellant, who is denied a judgment? We say that there is not a material difference, and that if the Collier judgment is right the Woodwell judgment is

wrong, and that to sustain this judgment dismissing appellant's case, the court below had to reverse the judgment in the Collier case. The two cannot stand together.

And surely the decision now complained of is not in harmony with the decisions of this court to which we have herein asked its attention.

WILLIAM H. ROBESON,
Attorney for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

JULIAN E. WOODWELL, APPELLANT,
v.
THE UNITED STATES.
No. 143.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This action was brought in the Court of Claims to recover for services alleged to have been rendered in the installation of the electric-light plant in the buildings occupied by and under the control of the Department of the Interior, Washington, D. C.

During the period covered by these services appellant was an employee in the Treasury Department, as inspector of electric-light plants under the jurisdiction of said department, and received a salary of $2,000 per annum.

The sundry civil appropriation act for the fiscal year ending June 30, 1902 (31 Stat., 1156), provided for the installment of an electric-light plant and for improvement of the heating system of buildings occupied by the Interior Department, and appropri-

ated $74,000 for that purpose, making no special provision for the employment of or payment for the services of an engineer, architect, or inspector (Rec., p. 9,. It appears in the correspondence between the Secretary of the Interior and the Secretary of the Treasury (Rec., pp. 5, 6, 7, 8) that there was no one regularly employed in the Interior Department qualified to prepare the plans and superintend the work, and that appellant, being familiar with such duties, was directed by the Secretary of the Treasury on May 10, 1901, to confer with the chief clerk of the Interior Department relative to the installation of the plant (Rec., p. 6). On June 21, 1901, the appellant was designated by the Secretary of the Interior as a member of a board of three, one from the Interior Department, one from the Post-Office Department, and the appellant from the Treasury Department, to open bids and recommend awards of contracts for this work (Rec., p. 7). Appellant was also directed, after special authority was secured from the Secretary of the Treasury, to go to Ridgeway, Pa., to inspect material to be used in the work. On this trip appellant expended $110. The record does not show whether or not he was reimbursed therefor.[a]

While stating in the opinion (Rec., p. 9) that the language of the directions under which appellant worked was indefinite as to the nature of his duties, the court found that as the result of the correspondence mentioned appellant performed certain services in and about the installation of said plant from

[a] Counsel will doubtless agree that appellant was reimbursed.

May 10, 1901, to February 1, 1902, the time consumed being eight hundred and ninety-seven hours, and that the work was done either during his annual vacation or outside of the regular office hours fixed for his duties in the Treasury Department. Appellant claimed that his services were worth 5 per cent of the total expenditure of $73,500, or $3,675; but there is no finding on this subject. There is nothing in the record, other than the statement in the petition, indicating the basis of this charge and nothing to show what such services were worth.

The court below rendered an opinion and entered judgment dismissing appellant's petition, whereupon he appealed to this court, and makes the following assignment of errors:

> The Court of Claims was in error—
>
> 1. In holding that because the claimant was an employee of the Government he could not recover the value of services performed for the Government entirely distinct from, and independent of, those required of him by virtue of his office.
>
> 2. In holding this to be a claim for additional or extra compensation, and that it is subject to the provisions of sections 1763, 1764, and 1765 of the Revised Statutes.
>
> 3. In holding that the claimant did not hold two distinct offices or places, each of which had its own duties and compensation.
>
> 4. In holding that an explicit provision for payment for such services in the appropriation bill was necessary to create liability for claimant's services on the part of the United States.

5. In not awarding a judgment in appellant's favor for $3,675.

THE STATUTES.

The law bearing upon the issues may be found in the following statutes:

> No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation. (R. S., sec. 1765.)
>
> No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law. (R. S., sec. 1763.)

Section 1764, Revised Statutes, provides as follows:

> No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk, in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

The only authority of law for expenditures in the work upon which appellant was engaged is in the sundry civil appropriation act of June 30, 1902 (31 Stat., 1156), providing:

> Electric-light plant for the Department of Interior buildings: For the establishment of an electric-lighting plant for buildings occupied by offices of Department of the Interior, the Patent Office building, the old Post-Office building, now occupied by the General Land and Indian bureaus, and the Pension Office building, and for improvement in the heating of the Patent Office buildings, including necessary conduits, the laying and construction of which are hereby authorized, seventy-four thousand dollars.

THE ISSUES.

Appellant contends that section 1765 does not apply because this service was separate and distinct from any service that could be required of him under his appointment in the Treasury Department; that it was performed on his own time; that the claim is not one for "additional" or "extra" compensation, but is for "compensation for services having no affinity or connection with the duties of the office held by appellant." (Brief, pp. 10, 11.)

The Government contends that said section 1765 applies with full force and effect in this case and that there is no exception in favor of appellant carved out of said section either explicitly or by inference, and, therefore, that unless specially authorized by law no "additional pay, extra allowance, or compensation in

any form whatever" can be allowed to appellant for his services in connection with the installation of said electric-light plant.

ARGUMENT.

In order to entitle appellant to a judgment in this case there must be some provision of law authorizing his employment and compensation therefor, or some statute authorizing his employment under a contract or regulation fixing his compensation. The act providing for the construction of the electric-light plant is entirely silent as to any provision for any sort of office, place, additional or separate services in connection with that work. There was no office or position fixed to which the appellant was or could be appointed directly or assigned temporarily. The services he performed were just such services for which payment is prohibited.

In referring to the foregoing statutes the court below gave an historical relation of the development of these prohibitive provisions and as leading up to the particular section applicable to this claim, namely, section 1765. The appellant here held one office fixed by law with a statutory rate of pay. There was no other office created either by law or executive regulations in which his services could be legally required. As to money payments, section 1765 uses the words "additional pay," "extra allowance," "*or compensation in any form whatever.*" As to services it employs these words: "For the dis-

bursement of public money *or for any other service or duty whatever.*"

There is no room for differences as to the meaning of these terms. It is apparently clear that Congress intends to control absolutely the compensation to be allowed to the officers and employees of the Government, and that, unless authorized by law, no additional pay, extra allowance, or compensation in any form whatever shall be allowed to any officer in the public service for any other service or duty.

The court below did not hold that under all circumstances the value of services performed separate and apart from the duties of a fixed office could not be recovered. It may not be denied that if such services and compensation therefor are provided by law, or fixed by a contract authorized by law, and the additional duties or office are compatible with those incident to the regular appointment, payment for such services may be recovered. But in the case at bar there existed no such authority of law, and this is the basis of the judgment of the Court of Claims in dismissing the appellant's petition.

The plain purpose of Congress may be seen in the progressive history of all legislation on this subject, beginning with the act of 1822 (3 Stat., 696) and ending with the act of June 30, 1874, providing—

> That no civil officer of the Government shall hereafter receive any compensation or perquisites, directly or indirectly, from the Treasury or property of the United States beyond his salary or compensation allowed by law.

This court, after reviewing these acts, used the following language:

> The just and fair inference from these acts of Congress, taken together, is that no discretion is left to the head of a department to allow an officer who has a fixed compensation any credit beyond his salary, unless the service he has performed is required by existing laws and the remuneration for them is fixed by law. (*Converse* v. *The United States*, 21 How., 473.)

No departure from these views has ever been noted in subsequent decisions of this court. Judgments have been affirmed in favor of claimants who have held two distinct offices, or who, holding one distinct office, have performed other separate duties under a separate employment, but in each case the court finds some provision of law authorizing the employment and providing for the compensation.

In the case of *United States* v. *Shoemaker* the question was whether there was any law affording compensation for the services of the regular collector of the port at Detroit in disbursing money appropriated for buildings. The court held there was no such authority and that the appellee could not recover on a *quantum meruit*. After discussing the act of 1842 (R. S., 1765), the court reaffirms the rule in the *Converse case, supra*, and in reference thereto says:

> In that case a compensation was allowed for an extra service rendered by the collector, but it was allowed for the reason that the service was rendered in pursuance of existing

> laws, and the appropriation for a compensation was made by law. The principle settled in that case is decisive against the allowance in the present one. (7 Wall., 342.)

The same rule was announced in the case of *Stansbury* v. *United States*, as follows:

> The appellant insists that the written promise of the Secretary to pay him the value of his services is a binding obligation on the Government. But this is not so, for no authority of law existed for the promise. The Secretary could not pay the claim because there was no appropriation to pay it, and he was not authorized by Congress to create an agency to perform the service in question. He undoubtedly acted in good faith with Stansbury, and supposed that Congress would approve the mode he adopted for obtaining useful information, and ratify his proceedings; and his promise, under the circumstances, must be considered as a dependent one, to take effect if Congress appropriated money to enable him to comply with it. Congress having failed to make the appropriation, the Secretary was justified in refusing to pay the claim. (8 Wall., 36.)

Again, in the *Hall case*, where these acts of Congress are reviewed, it was said:

> Compensation for extra services, where no certain sum is fixed by law, can not be allowed by the head of a department to any officer who has by law a fixed or certain compensation for his service in the office he holds, unless such head of a department is thereto author-

ized by an act of Congress. (*Hall et al.* v. *United States*, 91 U. S., 564.)

The case of *Saunders* v. *United States* was decided upon the point that the claimant held *two distinct offices*, "*with salaries or compensation affixed to each by law or regulation.*" (120 U. S., 129.)

The rule in the *Converse case, supra*, was again invoked in the case of *United States* v. *Brindle*, which was decided in favor of the claimant expressly on the ground that "by express provisions in the treaties the expenses incurred by the United States in making the sales were to be paid from the proceeds," and that "this clearly implied the payment of a reasonable compensation for the services of those employed to carry the trust into effect." Moreover, this case turned on the act of August 31, 1852 (10 Stat., 100), now section 1763, Revised Statutes, as follows:

> No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

The provisions of section 1765, Revised Statutes, invoked in the case at bar, do not appear to have been considered in the Brindle case except in so far as the rule in the Converse case is approved.

It was claimed in the case of *Mullett* v. *United States* that the claimant while holding the office of Supervising Architect of the Treasury Department rendered services in preparation of plans for a special commission not connected with the general scope of

his duties in the Treasury Department, and that such services were rendered on an implied promise to pay. This court considered the case under sections 1763, 1764, and 1765, Revised Statutes, and, after reviewing the foregoing decisions, the judgment of the lower court adverse to claimant was affirmed on the ground that there was no promise to pay and no act of Congress authorized the employment or provided for any compensation. With reference to these laws prohibiting such payments the court again says:

> Obviously, the purpose of Congress, as disclosed by these sections, was that every officer or regular employee of the Government should be limited in his compensation to such salary or fees as were by law specifically attached to his office or employment. "Extras," which are such a fruitful subject of disputes in private contracts, were to be eliminated from the public service. Such purpose forbids a recovery in this case. Mr. Mullett as Supervising Architect of the Treasury was in the regular employ of the Government at a stated salary of five thousand dollars. He was employed to render services which, if not strictly appertaining to his office or position, were of the same general character and to be performed at the same plac. No new office was created; no express promise of payment was made; no act of Congress in terms gave authority to promise payment, or made any provision or appropriation for compensation. The case is one simply of a claim for compensation for extra services, when not express authority

> therefor can be found in any act of Congress. (150 U. S., 570.)

In the case of *Hoyt* v. *The United States*, after quoting the eighth section of the act of March 3, 1839 (5 Stat. L., 349), Mr. Justice Nelson, in speaking for the court, said:

> It is impossible to misunderstand this language or the purpose and intent of the enactment. It cuts up by the roots these claims by public officers for extra compensation on the ground of extra services. There is no discretion left in any officer or tribunal to make the allowance unless it is authorized by some law of Congress. The prohibition is general and applies to all public officers or quasi public officers who have a fixed compensation. (10 Howard, 141.)

In another case a distinction was drawn between the added duties in line with the claimant's usual employment and performed in the same place, and added duties necessarily performed at a distance and of a nature different from those for which he was regularly appointed and employed. (*King* v. *United States*, 147 U. S., 676.)

DECISIONS OF THE COURT OF CLAIMS.

An analysis of the decisions cited by learned counsel for appellant discloses material differences between those cases and the case at bar as to the facts and application of the principles of law announced by this court in various cases.

In the *Crosthwaite case* (30 C. Cls., 300) (p. 13, appellant's brief) the claimant held, by regular

appointment authorized by law, the position of examiner in the Department of Justice. He was given an appointment in writing by the Attorney-General to the position of special assistant United States attorney for the purpose of presenting a case to the grand jury in Idaho. This second appointment and compensation therefor was specially authorized by law (secs. 363, 366, R. S.). The distinction between that case and the case now on appeal to this court is at once apparent. There the claimant held two positions, the appointment and compensation of each being authorized by law. The duties of each position were compatible one with the other, and the Court of Claims held that under the authority of the Saunders case the claimant could receive compensation for both. In the case at bar the appellant was never appointed to any position and no law authorized any position other than that held by him in the Treasury Department, nor was there any authority provided by law for his employment elsewhere or for his compensation either for separate service or for additional service.

As for the *Collier case* (22 C. Cls., 125), cited and commented upon at length by learned counsel for appellant, it may be said that the facts reported in the statement are somewhat similar to the facts in the case at bar, but they are by no means what counsel for appellant claims for them. Collier held the position of chemist of the Department of Agriculture and was specially employed as an expert witness in the Circuit Court of the United States for the Southern Dis-

trict of New York in a large number of cases brought against the collector of customs of New York for refundment of duties on imported sugars. It was lawful for the Secretary of the Treasury to pay for such services out of the permanent appropriation for the collection of the revenue. The claimant in accepting employment by the Treasury Department as an expert stipulated through the commissioner that no service should be required of him that would interfere in the least with his duties as chemist in the Department of Agriculture; that his work should be done outside of the hours of labor required by the department, *and that his services should be paid for by the Secretary of the Treasury at the same rate that he paid other men of like skill and experience.* This proposition was accepted by the claimant and the Treasury Department, and his employment was in accordance with its terms, specifically provided by this agreement for his compensation.

In the case at bar the appellant reported for duty to the Secretary of the Interior, in accordance with the direction by the Secretary of the Treasury, without any stipulation as to the employment of his time or compensation. The record fails to show that there was any official requirement or understanding that this appellant should perform his duties in the Interior Department under this assignment during any particular hours. The record shows affirmatively that the appellant herein on his own motion performed the service outside of the regular hours of employment in the Treasury De-

partment. This, taken in connection with the fact that appellant can show no agreement or even a suggestion of compensation for this work either from himself to the officials or from the officials of either department to appellant directly or by any order or regulation, creates a marked difference between the case at bar and the Collier case. As decisive of the Collier case the Court of Claims cited the following: *Converse* v. *United States; United States* v. *Brindle,* and *United States* v. *Saunders.*

In *United States* v. *Brindle* (110 U. S., 688), the claimant while a receiver of a local land office, was appointed by the President a "special receiver and superintendent to assist the special commissioner" to dispose of Indian lands. The law expressly provided for payment of expenses of such sale, the court holding:

> In the present case the employment was for a special service in connection with a special trust assumed by the United States for the benefit of certain Indian tribes, in which express provisions were made for the payment of expenses.

In *Converse* v. *United States* (21 Howard, 463), this court specially points out the authority for the additional employment as well as the fact that the law specifically provided for a fixed compensation, and the court said:

> no discretion is left to the head of a department to allow an officer who has a fixed compensation any credit beyond his salary unless the service he has performed is required by

> existing laws, and the remuneration for them fixed by law (p. 473).

United States v. *Saunders* (120 U. S., 126). In this case also the additional employment was in a fixed position for which the law provided certain compensation. While it may be argued that only by a questionable inference can these three cases be said to support the decision in the Collier case, the laws of analogy are certainly strained in any effort to apply the doctrines there laid down to the facts in the case at bar.

In the Stansbury case the lower court, in holding that the act of August 23, 1842 (sec. 1765, R. S.), barred the claim, said:

> It was contended for the petitioner that the services he rendered in his agency were no part of his official duty, and could not have been required of him by the head of the department as connected with or incident to his official position; and that, by the authority of the Supreme Court in *Converse* v. *The United States* (21 Howard's Reports, 463), he was entitled to compensation. But in the case cited the compensation claimed was authorized by law, and an appropriation was made for it, so that it is not an authority for the petitioner's claim. And that case was decided by a majority of the court, and the opinion of the minority sustained the ruling of the court below. We do not feel authorized, therefore, to adopt a doctrine beyond the decision made. (1 C. Cls., 124; affirmed 8 Wall., 35.)

In the Wilson case, on the same statute, there was also a distinct understanding that the claimant would be paid for his services which were entirely separate and distinct from those rendered under his regular appointment, and the court held to the same rule thus:

> The evidence indicates that the claimant's services were valuable; that they were strictly additional to the duties of his office; that they were rendered in the expectation of his being justly remunerated for them; and that the officer who employed him, and the officer under whom he acted as clerk, joined in that expectation, and gave to him such assurances; but we can not overrule the statute, and the claimant must seek relief in Congress. (1 C. Cls., 206.)

We contend that the law as announced by this court and the court below furnishes the standard whereby the facts in this case must be measured, and therefore the judgment of the lower court should be affirmed.

JOHN Q. THOMPSON,
Assistant Attorney-General.
CLARK MCKERCHER,
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WOODWELL *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 143. Argued April 8, 12, 1909.—Decided May 17, 1909.

Where there is no specific provision in the appropriation for government work and there is no intention of the department in which a Government employé is employed to call upon him to fill another separate and distinct office, his designation by the head of his department to do certain work for another department does not entitle him to extra compensation; and, under § 1765, Rev. Stat., he cannot be allowed extra compensation therefor, even though the services be of value to the Government, are rendered out of hours, and are in addition to the full performance of his regular employment. 41 C. Cl. 357, affirmed.

THE facts are stated in the opinion.

Mr. William H. Robeson for appellant.

Mr. Assistant Attorney General John Q. Thompson, with whom *Mr. Clark McKercher* was on the brief, for The United States.

MR. JUSTICE WHITE delivered the opinion of the court.

This appeal is from a judgment of the Court of Claims, dismissing a petition filed by the appellant to recover from the United States the sum of $3,675. 41 Ct. Cl. 357. From the findings of the court below the facts upon which the claim was based are substantially as follows: Woodwell, the appellant, is by profession a mechanical and electrical engineer. From a date prior to March 3, 1901, up to the time of the bringing of this suit, he was an inspector of electric light plants under the jurisdiction of the Treasury Department, receiving a salary of $2,000 per annum. In the sundry civil

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act, approved March 3, 1901, the following appropriation was made (31 Stat. 1156):

"For the establishment of electric lighting plants for the buildings occupied by the offices of the Department of the Interior, the Patent Office building, the old Post Office building, now occupied by the General Land and Indian Bureaus, and the Pension Office building, and for improvements in the heating of the Patent Office building, including necessary conduits, the laying and construction of which is hereby authorized, $74,000."

On March 11, 1901, the Secretary of the Interior sent to the Secretary of the Treasury a communication, in which, after reciting the terms of the appropriation act above referred to, he said:

"When this item was under consideration the Committee on Appropriation of the House of Representatives secured, through the Assistant Superintendent of the Treasury, the itemized estimate of cost of the proposed work upon which the amount of appropriation is based, and, at the hearing before the committee, it was also indicated by members thereof that it would be expected that the projected work should conform to the estimate and the general plan outlined therein.

"I have, therefore, to request that, if practicable, some competent person connected with the Treasury Department, expert in such matters, may be authorized to prepare detailed plans and specifications, upon which proposals for the work contemplated in the appropriation may be called for at an early date."

On March 14, 1901, the Secretary of the Treasury, acknowledging the receipt of this letter, said:

"In reply you are informed that the work incident to the preparation of the plans and specifications can be performed under the supervision of a qualified employé of this office, who is familiar with the requirements, but as the work will involve the employment of draftsmen and other persons who cannot be supplied from the regular force of this department

without detriment to its business, it is assumed that such service can be paid for from the appropriation provided for the installation of the plant. Such expense will not exceed $500, including the expense incident to a general inspection of the work during the period of the installation.

"It is the judgment of this department that the installation can be completed in all its details in the most satisfactory manner without exceeding the limits of the appropriation provided therefor—namely, $74,000."

In answering this letter the Secretary of the Interior said:

"Referring to your letter of March 14, 1901, in which you state that in compliance with the request of this department a competent person connected with the Treasury Department will be authorized to prepare necessary plans and specifications covering the installation of the electric lighting plant for the buildings of this department, and to your suggestion that the work will involve the employment of draftsmen and other persons who cannot be supplied from the regular force of the Treasury Department, and which would involve an expense not to exceed $500, which would include the expense incident to the general inspection of the work during the period of installation, I have the honor to inclose herewith a copy of the decision of the Comptroller of the Treasury, to whom the matter was submitted by this department, in which the conclusion is reached that prior to July 1, 1901, the preliminary expenses necessary to carry into effect the appropriation for the electric lighting plant may be incurred, although payment therefor cannot be made previous to that date.

"The department would be glad to have the preliminary work commenced at the earliest practical date, and would be pleased to consider any recommendations as to the employment of the services of draftsmen, etc., referred to in your letter. If such services cannot be procured upon the terms named by the Comptroller, it is believed that it can, in the meantime, be furnished by detail from some branch of this department."

And on May 10, 1901, the Secretary of the Treasury notified the Secretary of the Interior as follows:

"Referring to your letter of May 8, 1901, you are informed that Mr. J. E. Woodwell, inspector of electric light plants, has been directed to confer with E. M. Dawson, chief clerk, Department of the Interior, relative to the installation of an electric light, heat and power plant in the old Post Office Department building in this city."

Subsequently, the Secretary of the Interior made the following order, an official copy of which was sent to Mr. Woodwell through the Secretary of the Treasury:

"Order.

"Department of the Interior,
"Washington, June 21, 1901.

"A board to consist of Mr. Edward M. Dawson, chief clerk of the department; Mr. J. E. Woodwell, inspector of electric light plants, Treasury Department, and Mr. Joseph S. Hill, engineer, etc., 'General Post Office,' is hereby constituted to, from time to time, open bids and recommend awards of contracts for the work embraced in the installation of the electric lighting plant for the buildings of the Interior Department, and in the improvement of the heating of the Patent Office building.

"The board will meet at the office of the chief clerk of the department at such time as may be designated by advertisements for opening proposals for the work."

On November 23, 1901, the Acting Secretary of the Treasury sent the following communication:

"Referring to your letter of November 21, 1901, requesting that Mr. J. E. Woodwell, inspector of electric light plants, Treasury Department, be instructed to conduct a test of the engines and dynamos being manufactured by the Ridgeway Dynamo and Engine Company, Ridgeway, Pa., for the Interior Department, I have the honor to state that, owing to prior and important instructions, it will be impractical for

Mr. Woodwell to make the test the 25th instant, as desired by you.

"You are advised, however, that, if the matter can be held in abeyance until December 2, 1901, Mr. Woodwell will be instructed to make the test."

Thereafter the following from the Acting Secretary of the Interior was received by Mr. Woodwell:

"Department of the Interior,
"Washington, January 2, 1902.

"Permission having been obtained from the Secretary of the Treasury for you to perform such service, you are hereby authorized and directed to proceed to Ridgeway, Pa., as the representative of this department at shop tests to be made, commencing on Monday next, the 6th instant, of the engines and dynamos to be furnished by the Ridgeway Dynamo and Engine Company, under contract with this department.

"There is herewith inclosed, for your information and guidance, a copy of the specifications of the contract, wherein it is provided that 'The regulation, guaranteed efficiency, heating effect, and insulation resistance shall be determined by actual test in the presence of the department's authorized inspector, who shall determine test conditions. The tests to be made at the shops where the dynamos are constructed, upon due notification by contractors of their readiness to commence said test, and at the expense of the contractor, except traveling and other necessary expenses of department's agent. Should the test be delayed or require repetition for any reason for which the contractor is justly responsible, the cost of the delayed or any subsequent test, including the traveling and other necessary expenses of the department's agent, shall be at the expense of the contractor.'

"Mr. L. K. Sager, of this department (Patent Office), will be detailed to accompany you and assist in making the tests.

"Your actual expenses while engaged upon this service

will be paid by this department upon presentation of proper accounts and vouchers from funds available."

Because of the foregoing correspondence Mr. Woodwell, as a mechanical and electrical engineer, performed certain services in and about the installation of said electric lighting and heating plant, between the tenth day of May, 1901, and the first day of February, 1902, and devoted 897 hours to said service, and also necessarily expended $110 in connection therewith.

The services rendered were performed by Woodwell outside of his regular office hours as an employé in the Treasury Department, and during the time when the services were rendered he also fully discharged his duties as such employé of the Treasury Department.

While the Court of Claims declared that the facts above recited presented a strong equitable case in favor of the claimant, entitling him to a reasonable allowance if authority of law existed therefor, it nevertheless entered judgment for the Government upon the ground that the law—as contained in §§ 1763, 1764 and 1765 of the Revised Statutes, copied in the margin [1]—forbade the awarding of any compensation.

[1] SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.

SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance or compensation.

It was held that the facts did not make out a case of the holding by one person at the same time of two distinct offices, places, or employments, each having its own duties and its own compensation, but was merely a case of the performance of extra services by a Government employé, for the performance of which, even if it be assumed that there was authority of law therefor, nevertheless there was no "appropriation therefor explicitly stating that it was for such additional pay, extra allowance, or compensation."

We see no reason to doubt the correctness of the reasoning and conclusion of the court below. A succinct history of the legislation respecting the question of extra compensation for Government employés is contained in the case of *United States* v. *King*, 147 U. S. 676, 679–681. The decision of this case does not require that we should restate that history. If the facts presented by the record before us exhibit a case merely of the performances of extra services and not one of the filling of two distinct places, offices or employments, payment for such extra service is plainly prohibited by the terms of § 1765, Rev. Stat. That section was taken from two statutes, the first passed March 3, 1839 (5 Stat. 349, c. 83), and the second August 23, 1842 (5 Stat. 510, c. 183), and may be considered to be to some extent *in pari materia* with §§ 1763 and 1764. *United States* v. *Saunders*, 120 U. S. 126. As said in the *Saunders case*, speaking of §§ 1763–1765:

"Taking these sections all together, the purpose of this legislation was to prevent a person holding an office or appointment, for which the law provides a definite compensation by way of salary or otherwise—which is intended to cover all the services which, as such officer, he may be called upon to render—from receiving extra compensation, additional allowances, or pay for other services which may be required of him either by act of Congress or by order of the head of his department, or in any other mode added to or connected with the regular duties of the place which he holds; but that

they have no application to the case of two distinct offices, places or employments, each of which has its own duties and its own compensation, which offices may both be held by one person at the same time. In the latter case he is in the eye of the law two officers, or holds two places or appointments, the functions of which are separate and distinct, and, according to all the decisions, he is in such case entitled to recover the two compensations. In the former case he performs the added duties under his appointment to a single place, and the statute has provided that he shall receive no additional compensation for that class of duties unless it is so provided by special legislation."

Not only was there no specific provision in the appropriation for the employment and compensation of an electrical engineer to prepare plans and supervise the construction and installation of the plant in question, but the correspondence does not permit an inference that it was the intention of the Department of the Interior to call upon Mr. Woodwell to fill a separate and distinct office or employment from that which he already held under the Government. The letter of the Secretary of the Interior of date March 11, 1901, imports that the estimate upon which the appropriation was based was made upon the assumption that such work as was desired to be performed by the experts requested from the Treasury Department would be without extra cost to the Government, and the whole correspondence tends to negate the conception of either an express or implied contract between the Secretary of the Interior and Mr. Woodwell, by which the latter was to perform services for which he was to be specially compensated out of the appropriation in question or otherwise. The request made of the Secretary of the Treasury was not that he should name a competent person with whom the Secretary of the Interior might contract for the performance of the desired services, but was that he should "authorize," that is, designate, "a competent person" to do such work. The reply to such request, dated March 14, 1901, we think makes evident the

fact that it was not expected that the person who was to be supplied from the regular force of the Treasury Department, because it could be done without detriment to the public service, would be additionally compensated. Indeed, any inference that such thought was entertained by the Secretary of the Treasury is rebutted by the circumstance that in his letter he directed the attention of the Secretary of the Interior to the fact that an expense of about $500 would be necessary for the employment of draftsmen and others who could not be supplied by the Treasury Department, and that this sum would be regarded as sufficient for "the expense incident to a general inspection of the work during the period of installation." The direction given to Mr. Woodwell to confer with the chief clerk of the Department of the Interior "relative to the installation of an electric light, heating and power plant in the old Post Office Department building . . ." was addressed to him in his capacity of "inspector of electric light plants" in the Treasury Department. Presumptively, the aid which Mr. Woodwell rendered by direction of the Secretary of the Treasury to the Department of the Interior was done by him in and by virtue of the order and direction of his superior officer, and was not, therefore, a distinct employment. Certainly it cannot be said that Mr. Woodwell, whatever may have been the value of his services, was called upon to render a service specially required by an existing law and for the performance of which the remuneration was fixed by law. These conclusions clearly bring the case within the prohibitions against payment contained in § 1765, Rev. Stat. As there is no contention in argument respecting the claim for expenses ($110), which it is assumed has been paid, we eliminate it from consideration.

Affirmed.